UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/113
18 February 2000

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the International Organization for the Development of Freedom of Education, a non-governmental organization in special consultative status*

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

1. The second report by Ms. Katarina Tomasevski on the right to education will be submitted to the Commission on Human Rights at its present session.

2. Deeply concerned as we have been by the slow development of the right to education until quite recently, we welcome the interest it has aroused in the last few years in the Commission, the Sub-Commission on the Promotion and Protection of Human Rights and the Committee on Economic, Social and Cultural Rights.

3. At its November-December 1999 session, the Committee considered and adopted a general comment on article 13 of the International Covenant on Economic, Social and Cultural Rights. The comment was drafted by Mr. P. Hunt, and the work was of high quality. We have repeatedly had occasion, both in writing and orally, to commend the work accomplished and we are convinced that the document adopted by the Committee on Economic, Social and Cultural Rights will be a landmark in the history of the right to education.

4. However, despite our positive appreciation of the text adopted, we consider that the question of freedom of education has not been dealt with in sufficient depth.

5. The two reports on the right to education adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 1998 and 1999[1] explicitly underscore the cross-sectoral nature of the right to education, which is a "right of access to a service" but also a "freedom-right". This cross-sectoral nature does not appear to us to have been adequately taken into account in the report adopted on 29 November 1999 by the Committee on Economic, Social and Cultural Rights.

6. During the discussion on 29 November, we took the floor to request the Committee to explore new avenues concerning the freedom aspect. We proposed some specific amendments to the text under consideration. Unfortunately, we noted, particularly during the discussion of our proposals, that freedom of education as formulated in article 13 of the Covenant still gave rise to some fears. We believe that the refusal to accept those proposals, reasonable and responsible though they were, has meant that the document adopted by the Committee on Economic, Social and Cultural Rights constitutes no significant progress in thinking on the issue that concerns us.

7. Our Organization, which has been working with human rights bodies for over 10 years, attaches great importance to the issue of freedom, as we have frequently reiterated in the many statements we have made, especially in the Commission on Human Rights.

8. We have always stood up for freedom of education in the spirit of human rights, that is to say by emphasizing the need to make those involved in education, such as parents and teachers, more aware of their responsibilities.

9. Our conception of freedom of education is midway between a purely State-run education approach and one that would endorse a dismantling of educational systems or an irresponsible withdrawal of the public authorities. We are vigorously opposed to both of these extremes and regret that our concern for freedom is constantly interpreted as a call for the promotion of private

Seducation to the detriment of the responsibility of the public authorities. On the contrary, we take the view that the public authorities have a crucial role to play in promoting the right to education, but that such a role must not stand in the way of the parents' right to choose their children's education, a right to which they are specifically entitled under the international instruments.

10. Obviously, no one denies the principle of such freedom. But the refusal to recognize that States are under an obligation to finance the exercise of such freedom has the effect of rendering such statements of principle utterly meaningless. Worse still, such refusal constitutes blatant discrimination within the human rights system itself, in particular when the choice of a school other than a state school results in often insurmountable financial constraints.

11. The first report submitted to the Commission by Ms. Tomasewski[2] states that the right to education presupposes that the education provided is, among its other characteristics, "acceptable" and "adaptable". These two criteria, which are also included in the general comment on article 13, clearly show that the right to education is not just a right of access to education, but means that the type of education proposed must be acceptable, in particular to the parents and the pupils themselves, and that it should also be organized in such a way that it is able to adapt to the various and changing needs of society.

12. The "acceptability" of education means that the education provided must be able to accommodate the parents' diversity of religious, philosophical and educational opinions, which can only come about if there is a wide variety of schools operating with their own, explicitly formulated, characteristics within an overall framework of responsibility and equity established and overseen by the State. This, in our view, is what genuine freedom of education is about. Consequently, the right to education is respected only if there is a wide variety in the educational services offered and if a choice between the various types of education on offer can effectively be exercised without discrimination of any kind.

13. The "adaptability" of education means that education must no longer be controlled by a single administration, imposing a single curriculum and method. Only a system of responsible freedom can implement an educational policy adapted to actual needs. Only a flexible and lively educational structure can meet this need for adaptability.

14. The obligations assigned to the State in the educational sphere are therefore obligations to produce results. The State must take the necessary steps to respect, protect and promote the right to education, but that does not mean that it has to be the only provider of education. On the contrary, we believe it is essential that international standards incorporate the obligation for States to guarantee fair and equitable access by all children to publicly provided financial resources for education.

15. As we have already pointed out, there can be no effective exercise of a freedom without the financial means of exercising it. Public international law has in fact evolved considerably in that regard. There are, for example, the major decision taken by the French Constitutional Council on 23 November 1977[3] and Decisions 5/1981 and 77/1985 of the Spanish Constitutional Court.[4] In all these instruments, it is affirmed that freedom of education is part of freedom of

conscience and that, in order to guarantee that freedom, the State must ensure the equality of citizens before the law, specifically by granting financial means in a non-discriminatory manner.

16. This is also specified in paragraph 9 of the European Parliament resolution on freedom of education in the European Community (14 March 1984): "The right to freedom of education implies the obligation for member States to render possible, financially as well, the practical exercise of this right and *to grant [private] schools the public subsidies necessary for the exercise of their task and for the fulfilment of their obligations under conditions equal to those enjoyed by the corresponding public schools*, without any discrimination against the organizers, parents, pupils and staff".

17. We deem it essential that the human rights bodies should adopt an entirely new approach to this question of freedom.

18. If we consider, for example, the situation of education in the third world countries, it is quite obvious that many States are unable to establish adequate structures to ensure basic education. This is due as much to financial constraints as to problems of competence. What often happens is that schools born of civil society initiatives take over from an inadequate State educational provision. For want of adequate funding, such initiatives may well collapse, thus worsening an already precarious educational situation. Furthermore, in these countries, there is a real potential for setting up grass-roots structures which could effectively dispense basic education if they were granted even modest financial assistance.

19. Freedom of education is also a prerequisite for the implementation of the legal provisions concerning indigenous peoples. International Labour Organization (ILO) Convention (No. 169) concerning indigenous and tribal peoples in independent countries clearly spells this out. In Part VI on education, article 27 stipulates the following: "Governments shall recognize the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose". The general comment on article 13 does not go nearly as far as the provisions of Convention No. 169 in this respect.

20. Lastly, freedom of education and the appropriate funding which is closely linked to it, is also a prerequisite for the renewal of western educational systems. Key documents, like the report submitted by Mr. Jacques Delors to UNESCO under the title "Learning: The Treasure Within" and the "White Paper" on education produced by the European Commission, emphasized the need to renew educational policies by providing for greater diversification and making the education agents more aware of their responsibilities.

21. In conclusion, our Organization hopes that the revival of interest in the right to education will lead to genuinely novel interpretations of the many legal instruments which regard freedom of education as a basic right. We are sure that the Commission on Human Rights has the will to move forward along this innovative path. Our Organization is ready, as in the past, to make its contribution to this debate.

Notes

[1] E/CN 4/Sub 2/1998/10 and E/CN 4/Sub 2/1999/10

[2] E/CN 4/1999/49

[3] Faced with the challenge to articles 1 and 3 of the Guermeur Act, concerning on the one hand the specific character of the school as an institution and, on the other, the question of the financing of independent schools, the Constitutional Council took the view that the principle of freedom of education "Constitutes one of the fundamental principles recognized by the laws of the Republic, which were reaffirmed by the preamble to the 1946 Constitution and upon which the 1948 Constitution conferred constitutional validity" Further, the Constitutional Council, recalling the principle of free, secular public education, affirmed that the latter principle "could not preclude the existence of private education, nor the granting of State aid to such education under the conditions set out by law"

[4] Decision 77/1985 Freedom of education is "a projection of ideological and religious freedom and of the right to disseminate freely one's thoughts, ideas or opinions" (Seventh basic legal principle)

"The constitutional precept stating that 'the public authorities will assist education centres which meet the prerequisites laid down by law' cannot be interpreted in such a fashion as to mean that the possibility of granting such assistance or otherwise is an absolute prerogative of the legislator" (II 11)

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/114
21 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 5 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

It has long been the position of many member states of the United Nations that Indigenous Peoples are not subjects of the right of Self Determination despite the affirmation in international law of this right as a right of all Peoples. Indigenous participants in many fora where the issue has been raised, including this Commission, have asked for an explanation of the legal basis of this position from these states, and have found the responses inadequate, to say the least.

But the denial of the recognition of this right as applying to Indigenous Peoples has had consequences. It led in 1982, to the naming of the Sub-Commission's Working Group on Indigenous Populations using the words " Indigenous Populations" and not, as it should have been, the " Working Group on Indigenous Peoples."

Opposition to the term " Indigenous Peoples" and its significance continues even to the present, not only within the United Nations in the Intersessional Working Group on the UN Draft Declaration on the Rights of Indigenous Peoples, but within the Organization of American States' own Draft Declaration.

In 1986, the Conclusion of the Meeting of Experts on the Revision of the Indigenous and Tribal Populations Convention No. 107 of the International Labor Organization cited the position of Indigenous participants on the importance of self-determination as a basic principle for the development of new standards within the ILO. Yet, because of the position of certain states, in the resultant Convention No. 169 on Indigenous and Tribal Peoples, in 1987, the term " peoples" is denied its meaning as regards rights that may attach to that term under international law.

That the ILO chose the term " peoples" itself, in the title and text of the convention, given the early and vehement opposition by some states to the term' s usage under any circumstances, may have been a sign of progress at that time, even with this qualification of its normal meaning in the context of international law. And in its comments to the Commission on the initial consideration of the UN Draft Declaration on the Rights of Indigenous Peoples, the ILO took the position that its Convention 169 did not deny that the right of Self-Determination was applicable to Indigenous Peoples, only that it left it up to the United Nations to extend that recognition. (Comments on the draft United Nations declaration on the rights of indigenous peoples, E/CN.4/1995/199, 6 February, 1995).

In this way, human rights standards continue to evolve. Indigenous Peoples have always known that human rights are not inventions of the United Nations, but that the United Nations has its role in the recognition of those rights in its standard setting. Human rights and fundamental freedoms themselves are inherent and eternal, and despite recognition or the lack of it by the United Nations, Indigenous Peoples know they have the right of Self Determination, and know full well, as the United Nations and its experts have always known, that lack of enjoyment of that right precludes the effective enjoyment of all other human rights and fundamental freedoms. What was lacking was the explicit recognition of this right as applicable to Indigenous Peoples.

The International Indian Treaty Council calls the Commission' s attention to the concluding observations of the Human Rights Committee on the Government of Canada' s fourth periodic

report on its observance of the International Covenant on Civil and Political Rights (ICCPR). (CCPR/C/79/add.105, 7 April 1999).

As the treaty monitoring body of the ICCPR, the Human Rights Committee, as an area of concern, examined the application of the right of self determination to Indigenous Peoples in Canada. Pointedly, the Committee, upon examination of Canada's compliance with the ICCPR with regard to Indigenous Peoples, urged the Canadian government to " report adequately on the implementation of article 1 of the Covenant in its next periodic report."

Noting that the situation of Indigenous Peoples remained the " most pressing human rights issue facing Canadians," the Human Rights Committee emphasized in its Concluding Observations, " ...that the right of self determination requires, *inter alia*, that all peoples must be able to freely dispose of their natural wealth, and that they may not be deprived of their means of subsistence," requirements of Article 1 of the Covenant.

The applicability of the Right of Self Determination to Indigenous Peoples can now no longer be denied. The Human Rights Committee, by the terms of the International Covenant on Civil and Political Rights, is the arbiter of the proper application of the rights recognized in the Covenant by state parties. The Human Rights Committee has openly and unqualifiedly recognized Indigenous Peoples as subjects of Article 1 in Common and the right of Self Determination.

The International Labor Office, in its comments on the UN Draft declaration cited above, voiced concerns that the standards reflected in the Draft declaration not be lower than existing standards, a principle provided for in General Assembly resolution 41/120 of 4 December, 1986.

In the light of the recognition by the Human Rights Committee, it would be incongruous indeed if the United Nations were to adopt a Declaration on the Rights of Indigenous Peoples adopting a lower standard than those recognized in international law. The Human Rights Committee would continue to adjudicate rights of Indigenous Peoples not found in a United Nations Declaration purporting to recognize those same rights.

Without a full recognition of all of the rights recognized by international law as applicable to Indigenous Peoples, the United Nations Declaration on the rights of Indigenous Peoples would have no moral force or legitimacy. Such a declaration would mock not only the long-standing, legitimate aspirations of Indigenous Peoples but the "common aspirations of mankind."

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/115
21 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The Commission is aware of the racist practice throughout the United States of using Indians as "mascots" for sports teams. The International Indian Treaty Council will share with this Commission the following excerpts from a statement recently received from a young Indigenous student from the town of Wasilla, Alaska, with reference to this practice:

"Nationwide, sports programs in schools, universities, and professional sports programs have used Native Americans as their mascots. These mascots include: Redskins, Indians, Braves, and Warriors. These mascots are racist in every form. Wasilla High School and Wasilla Middle School have these racist mascots.

"These sports programs claim to be honoring Native Americans, and say that without their recognition, the rest of the nation would forget that Native Americans ever existed. First off, the Native culture will always exist, and second, Native Americans are not honored when there is racism in the way. There is no honor in being remembered as savages who ran wild killing white people with tomahawks.

"I graduated Wasilla High School in 1997, and I was very uncomfortable with the things I saw...I saw students doing the tomahawk chop during hockey games, during Homecoming, I saw a man sitting on a horse dressed up as what people think an Native American is supposed to look like, and I saw a female student running around in a mascot costume. On mascot's head was a single feather, but that was not as near noticeable as the mascot's giant nose. My ancestors didn't wear feather headdresses, instead my great-great-great-grandmother wore a rope around her neck, tied to a tree by her white kidnapper for the rest of her life.

"Speaking of female Native Americans, I'd like to clear up the meaning of "squaw". People assume that male Indians were called "braves" or "warriors" , while the females were called "squaws" . I have even heard this term used to for female athlete Wasilla High School students. The word squaw comes from an Algonquin word referring to the female genital area. The white traders shortened the word to "squaw" and called the Native women this. This here is not only racism, it is sexual harassment.

"[The term] " Redskins" also has a different meaning. People think that term comes from the Native people's skin color, this is not so. In the 19th century, trappers would kill Indians for trade. They would trade animal skins, and these scalps. Some of the white women did not like this term scalp, so the trappers started calling the scalps "Redskins", referring to the bloody mess that happened after the trappers cut off the scalps of the Indians.

"This is clearly racist, but even in today's society, people have not bothered to educate themselves because the American public will wear clothing that said "Washington Redskins" on it, or should [it say] "Washington bloody scalps" .

" Wasilla High School's goals and philosophy in the handbook states "In partnership with parents and other community members and agencies, the staff of Wasilla High School will assist engaged learners in development of respectful attitudes towards themselves, others, and the

environment.." Having this mascot, respects neither the student nor others, so therefore, Wasilla High School's goals are not met. Ignorance is put in its place, and that hurts the student. Instead of being friends and putting a stop to stereotypes, when a student looks upon Native American, the Native will be called a drunk, dirty, and or like I was told, "quit living off my money."

"Wasilla High School is not alone in the mascot situation. A lot of other states are being challenged to end this racist problem, and many are putting a stop to it. Wasilla's mascots maybe a tradition, but it goes against everything I believe the schools want their students to learn.

"Please no longer group the Native American people with beasts like moose, objects like stars, and fantasy like knights. The Native American people are the only ethnic group of people used as mascots. How would you feel if your culture was mocked? How would you feel if across the nation, people were mocking your own culture as for the sake of a sport? High school tradition and sports are nothing compared to the Creator of this Universe has given us, the right to be respected and accepted as a people."

A more eloquent and moving statement on the daily indignities and injuries of racism against Indigenous Peoples cannot be found. Lamentably, the indignity of a developing child, harm enough, is not the only evil of racism. Dominant societal attitudes that demean, pervasive racist postures that dehumanize, also serve to justify the physical, social and economic exploitation of Indigenous Peoples in almost every country where Indigenous Peoples have managed to survive, not just in the United States.

With the advent of Globalization and so-called "free trade", another racist practice, identified in the United States as " environmental racism" is spreading at an alarming rate throughout the world. Environmental racism is the imposition of disproportionate impacts of environmental despoliation on a marginalized racial group. The effects on racially marginalized communities, which in the US include Afro-American and Latino communities as well as Indigenous Peoples, encompass birth defects and stillborn babies, cancers and other chronic deadly diseases.

The IITC notes with approval that the National Environmental Justice Advisory Committee, an national advisory body to the Administrator of the United States Environmental Protection Agency, found that the adoption of the United Nations Draft Declaration on the Rights of Indigenous Peoples is an urgent environmental justice concern. At its November, 1999 session, NEJAC recommended that the Administrator immediately communicate with the US Department of State that the United States support the adoption of the UN Draft Declaration on the Rights of Indigenous Peoples without change or amendment. This same body, whose mandate is to advise the Administrator of US EPA on matters of environmental racism and environmental justice, also recommended to the EPA Administrator that the United States Department of State, as well as the United States Trade Representative be bound by the same rules regarding environmental justice and human rights observance as all other Agencies of the United States.

The Draft Declaration and globalization are urgent environmental justice concerns for the United Nations as well. Shell Oil Company's Ogoni oil fields, Rio Tinto's Papua New Guinea and Lehir Island gold mines, the increased use of pesticides in industrialized agriculture in Mexico,

and deforestation throughout the world, exemplify governmental tolerance of trans-national environmental racism and resultant massive human rights violations against Indigenous Peoples. Some governments have dared to suggest that massive pollution of Indigenous lands and Peoples are " national sacrifices" for much needed " national development." Would they "sacrifice" their own dominant racial groups? In truth, the majority of the inhabitants of many such states continue to live in extreme poverty in spite of the tremendous toll Indigenous Peoples suffer.

There is an inverse proportion of distance to the detriments and benefits of " national development. " Those whose lives and cultures are closest to the source of wealth, increasingly Indigenous Peoples, suffer direct and massive detriment, while those who live the farthest away, primarily in the "North," reap of the benefits and feel none of the pain. Our Mother Earth cannot withstand these abuses, and the distance between the benefit and the pain is growing ever closer. The pollution of racism is now also polluting the racist.

The International Indian Treaty Council commends the Committee on the Elimination of all Forms of Racial Discrimination, the Treaty Monitoring Body of CERD, for recognizing that the rights of Indigenous Peoples to their lands and resources are matters within its competence. The Committee found that Australian legislation concerning extinguishment of Native Title raised concerns under CERD Article 2 and 5. The Committee called upon the state party to address these concerns as a matter of utmost urgency and placed the matter on its agenda under its early warning and urgent action procedures, to be reviewed again at its fifty-fifth session. (CERD/C/54/Misc.40/Rev.2, 18 March, 1999).

The IITC calls upon this Commission, and its various subsidiary organs, in particular all human rights Treaty Monitoring Bodies, as a matter of utmost urgency to do as the CERD Committee and the Human Rights Committee have done, to directly recognize and address the rights of Indigenous Peoples as Peoples, so that the deadly evils of racism and discrimination finally be brought to task. In particular, we call upon this Commission to finally and forever cease its own discrimination by recognizing that the right of Self Determination of Peoples is a right to be enjoyed by Indigenous Peoples, and adopting the UN Draft Declaration on the Rights of Indigenous Peoples without change or amendment.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/116
21 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 7 of the provisional agenda

THE RIGHT TO DEVELOPMENT

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The International Indian Treaty Council would like to address the Right to Development and its application to Indigenous Peoples.

The prevailing model for development under which member states have entered the Gregorian calendar's 21st century, has brought unparalleled economic prosperity to a few sectors of world society. But, as evidenced by the recent protests of hundreds of thousands of people throughout the world, including over 50,000 peaceful demonstrators including Indigenous Peoples' organizations in Seattle, Washington USA, during the Third Ministerial Meeting of the World Trade Organization, prosperity for the few comes at the expense of the human rights of millions.

Whether member states would listen or not, one of the broadest coalitions of the many sectors of civil society in modern history gathered in Seattle to discuss proven alternatives to the unbridled globalization of commerce which currently guides development. In the face of documented, unprovoked brutality, including beatings, the shooting of rubber bullets and point-blank chemical spraying by Seattle police forces, we declared the following: that today's development model has exacerbated human rights violations throughout the world, especially for Indigenous Peoples.

In the experience of Indigenous Peoples, development as currently imposed upon our communities results in violations of our right to development through irreversible damage to our ancestral lands, waters and natural resources. It also compromises our food security and traditional means of subsistence, our physical, spiritual and mental health, and, in many cases, relies upon our forced relocation or violent death at the hands of state forces and transnational interests. We would like to call to the Commission's attention that Indigenous Peoples have found no effective means of redress within the UN system to date for violations of our right to development, or for the gross violations of our comprehensive human rights resulting from the imposed development model.

The UN General Assembly adopted the Declaration on the Right to Development nearly twenty-five years ago. Article 1 of the Declaration states that the right to development is an inalienable human right in which all peoples are entitled to participate, and that this right is characterized as one "in which all human rights and fundamental freedoms can be fully realized." Article 1 also states that the full realization of the right of peoples to self-determination, and "full sovereignty over their wealth and natural resources," are fundamental to the right to development.

With respect to Indigenous Peoples, the 1990 UN Global Consultation on the Right to Development stated that, "the most destructive and prevalent abuses of Indigenous Rights are the direct consequences of development strategies that fail to respect their fundamental right of self-determination."

The Declaration on the Right to Development also recognizes that development is a comprehensive economic, social, cultural and political process. Other international declarations, standards and plans of action, such as those, which over 100 heads of state endorsed and adopted at the 1992 UN Earth Summit, maintain that that economic criteria for development must be balanced by social and environmental criteria.

As Indigenous Peoples, we are recognized by Agenda 21 -- the Earth Summit's plan of action for achieving sustainable development in the 21st century -- as a "Major Group" with a unique, historical relationship with and expertise about our lands and resources, Agenda 21 states that we should have an effective voice in the UN Commission on Sustainable Development (CSD) as it monitors, reports on and ensures effective follow-up to the Earth Summit.

The IITC has participated with a number of Indigenous Peoples' organizations in each annual session of the CSD since its creation in 1992. But the Indigenous presence at the CSD has dwindled significantly due to frustration with positions taken by many member states, especially those in the CANZUS group, Brazil and others; they consistently demonstrate a lack of political will by ignoring the millennial expertise which Indigenous Peoples bring to the table, failing to address and act upon our recommendations for sustainable development, and systematically deleting our references to human rights in the negotiated texts. Indeed, a member of the Secretariat of the Intergovernmental Forum on Forests confirmed our fear that the Intergovernmental process followed a "silva nullius" or "empty forests" doctrine when one of its members specifically encouraged us to leave human rights, social and cultural issues out of our interventions.

CHR Resolution 1996/38 recognizes "the profound spiritual, cultural, social and economic relationship that indigenous people have to their total environment and the urgent need to respect and recognize the rights of indigenous people to their lands and resources." It also acknowledges that "many of the human rights problems faced by indigenous people are linked to the historical and continuing deprivation of ancestral rights over lands and resources." While natural resources have been irreversibly depleted within the so-called developed world, an estimated 80% the world's biodiversity is found within Indigenous Peoples' lands. This, in turn, has provided a basis for the most pervasive forms of discrimination and resulting human rights violations against Indigenous Peoples.

To name one of many cases of current concern to the IITC, the government of Mexico continues to violate the 1939 presidential decree signed by Mexican President Lazaro Cardenas, which formally recognized the Yaqui People'lands in Mexico. The presidential decree also recognized the rights of the Yaqui Peoples, who are traditional subsistence farmers, to half the water in the Rio Yaqui (Yaqui River). Despite this commitment, since the decree was signed the Mexican government has permitted a series of dams to be built upstream, greatly reducing the amount of water from the river that actually reaches Yaqui lands. In addition, the Mexican government forces the Yaqui farmers to pay for the water at prices they cannot afford.

Soon after the decree was signed, Mexican banks also placed loan conditions on the Yaqui farmers, dictating which crops the Yaqui would grow and how they would grow them if they borrowed money to pay for the water and other costs of farming. Over time, these government- imposed conditions placed on their right to development have forced the Yaqui into a state of dire poverty in which they are forced to rent their lands to Mexican growers because they can not afford to plant themselves. They now suffer high rates of sickness and death due to groundwater contamination by the toxic pesticides used extensively by these growers in their farming practices.

Finally, we note with alarm that in northeast Colombia, after being surrounded by what is estimated by witnesses to be several thousand Colombian soldiers and police who threatened to poison the waters of the U'wa People and prevent them from obtaining food, several hundred U'wa were forcibly removed from a part of their ancestral lands to which they have title. This land encompasses a proposed oil drilling site of Occidental Petrolcum. Oil drilling at the drill site, which has a buffer zone of less than 1 km between it and the U'wa reserve, poses an irreversible threat to the U'wa. Furthermore, the drilling license was approved through a process which defied Colombian as well as international norms of effective consultation with Indigenous Peoples about projects which threaten their lives or culture.

We remind the Commission that forced removal is defined by Protocol II of the Geneva Convention as a crime, and is prohibited in time of war and civil conflict. But it is carried out against Indigenous Peoples with impunity by states in the name of drilling, mining, de-forestation and other development practices.

With respect to Indigenous Peoples Present-day development makes a mockery of the Declaration on the Right to Development and many international instruments and standards designed to protect ALL Peoples from the harms of purely market-oriented development. Indigenous Peoples in particular suffer disproportionately from a lack of corresponding mechanisms to safeguard our fundamental human rights in the face of imposed development.

We have found little-to-no national or international redress for the violation of our comprehensive human rights in the development context, or for our rights to determine what is meant by sustainable development for the health, well being and prosperity of our current and future generations. Therefore, we urge that the Commission on Human Rights establish at this session, without further delay, a Rapporteur on Indigenous Peoples, with a mandate which includes assessment of the impacts of imposed development on Indigenous Peoples and the denial of our fundamental right to development.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/117
21 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The IITC is deeply concerned about the continued violations of human rights and fundamental freedoms committed against Indigenous Peoples throughout the world. The IITC has received these specific cases of documented abuses Indigenous Peoples to bring to the attention of this session of the Commission.

In Colombia, the U' wa Peoples are struggling to protect their communities, culture, environment and traditional territories from destruction by oil exploitation activities. In Colombia, and throughout Latin America, oil exploitation has forced Indigenous Peoples from their traditional territories and violated their rights to life, health, culture and a healthy environment by contaminating the water and air with toxic pollutants and opening previously pristine areas to deforestation and other forms of resource extraction. In Colombia, oil exploitation is accompanied by increased political violence, with Indigenous Peoples caught in the crossfire.

The Colombian government' s recent approval of a license permitting Occidental Petroleum to drill in Iowa traditional territory was the result of a process that made a mockery of international norms and Colombian laws requiring full consultation with Indigenous Peoples before approving projects that jeopardize their lives or culture. The final approval of the first well at a site known as Gibraltar 1 was made without any real consultation with the U' wa, despite the fact that the well is within their ancestral territory and less than a kilometer from the border of their reservation.

In November 1999, the U' wa purchased the land encompassing the well site. Since that time, several hundred U' wa have lived in an encampment at the site, exercising their right to occupy territory that belongs to them and peacefully protesting the planned drilling. In January of this year, at least 500 and possibly thousands of Colombian soldiers and police moved in, encircling the U' wa. The soldiers threatened to poison the U' wa' s water and prevent them from obtaining food if they did not leave the well site. On January 25, the military forcibly removed the remaining U' wa in helicopters, hitting and kicking a number of them in the process, according to eyewitness accounts.

In Guatemala, on February 22, 1999, the report of the Historical Clarification Commission (Commission del Esclarecimiento Historico -CEH-) was publicly released as a part of the Peace Process. The IITC is concerned with the administration of CEH and the lack of effective response by the Guatemalan government to date.

Defensoria Maya, an NGO affiliate of IITC in Guatemala, writes:

" The contents of CEH report are realistic. The impact of the report has been major, demonstrating a large part of what occurred in Guatemala during a phase of history. We are also deeply satisfied that the massacres were reported as a crime of genocide, in addition to targeting those who have committed these abhorrent acts against our peoples. The report entitled ' Memories from the Silence' makes it known that the Mayan People were those most affected by the racism, discrimination, and the extermination policies of the Guatemalan government and army.

" All of Guatemala society, but primarily the Mayan People, have been challenged to follow-up on the recommendations made by the CEH. What has made it all the more difficult, is that the government which recently left office has ignored not only the official recommendations of the CEH, but also the recommendations proposed in 1999 by the National Commission of the Mayan People for the Historical Redemption and Recovery of the Memory of our history.

" During the year 2000, Mayan organizations and our own authorities need to strengthen and consolidate the body formed by Civilian Society to follow-up on the CEH recommendations. At the same time we need to expand and consolidate the National Mayan Commission to work on recommendations made by our Mayan organizations. Those recommendations were submitted to the various governmental administrations and to the CEH at the appropriate time. "

During this 56th session of the Commission the IITC calls upon the newly elected Government of Guatemala installed on January 14, 2000 to make a firm commitment before the world community to initiate a process to implement the recommendations of the Historical Clarification Commission as well as the National Commission of the Mayan People. This is a fundamental prerequisite to beginning the process of addressing and rectifying the profound and pervasive marginalization, discrimination and human rights abuses which the Indigenous Peoples of Guatemala have endured.

In Mexico, the IITC is concerned about the increased militarization in the country as well as violations perpetrated against Indigenous communities. The myriad of violations of fundamental human rights committed in the states of Chiapas, Nayarit, Oaxaca, Campeche, Yucatan, Guerrero, and in Mexico City continues to increase. The Mexican military has cordoned off potions of the Lacondona region of Chiapas, increasing the isolation of many Indigenous communities. The lives of Indigenous women, children and elders are endangered by the military presence, which has prevented both humanitarian aid and human rights observers from reaching them with assistance.

In Chile, the government has broken the Agreement to Respect Citizens' Rights signed on August 5, 1999. On August 22, Chilean police and military forces violently occupied over an VIIIth Region community, Pablo Quintriqueo Huenuman, detaining 34 Mapuche people in an official meeting. On August 19 six people from Choin Lafquenche of Collipulli were detained and beaten. Over 400 people in the region were forcibly removed from their lands and imprisoned between January and August. This figure compares with the worst years of repression under the Pinochet regime. These military police actions often occur without official authorization at the request of forestry companies.

The Ralco project, for example, which proposes flooding of 3,400 hectares of land bordering the upper BioBio river, is being developed by national energy giant Endesa, majority-owned by electricity-sector holding firm Enersis. Last year Endesa-Spain

acquired a high number of shares in Enersis, owner of Endesa-Chile. The Spanish company now has decision power over the construction of the Ralco Dam. Endesa-Chile has been authorized to continue construction of the Ralco Dam by the government's Electricity and Energy Authority.

The Puenche Indigenous Peoples have refused to accept relocation packages offered by the energy firm. In order to stop construction of the dam, Puenche elder Nicolasa Quintreman will begin legal actions against Endesa Spain, filing a legal summons for the ethnocide against the Puenche Peoples before the Spanish Court (Audience). Spanish penal law prohibits carrying out acts that contribute to the destruction of other peoples. Spanish penal law, in Article 607, prohibits forcible removal and subjecting Indigenous Peoples to conditions that put their lives or health in danger.

Forestry companies have used intimidation tactics against the Mapuche Peoples to discourage their demands for the return of their ancestral lands, including attempts to criminalize Mapuche leaders through false allegations by paid witnesses.

Endesa-Chile has committed a series of anti-ethical and illegal actions in order to facilitate the resettlement of the Puenche communities. Several international commissions and tribunals have condemned and posed serious questions to the way that Endesa Chile has been conducting the construction of the Ralco Dam over the BioBio including the International Finance Corporation (IFC) of the World Bank, (Hair, July 1997), and the Human Rights Committee of the American Anthropological Association (March 1998).

In Brazil, in the state of Bahia, the government increased the contingent of military police in the region where the Pataxo Indigenous Peoples had been able to recover nine farms that trespassers had invaded in the Caramuru Catarina Paraguacu Indigenous area in Pau Brasil in the south of Bahia. On November 16, 1999, the Military broke into houses and threatened Indigenous peoples, killed their farm animals, beat and constraining community members including women. The Pataxo and the Pataxo Ha-ha-hae, around 1,200 people, including children, were isolated at the Milagrosa Farm. Violence in the area is escalating, perpetrated by gunmen contracted by farmers. Meanwhile, farmers have rejected a settlement agreement that would return Indian lands. The Action to Nullify the Property Titles for the Indigenous Peoples' lands appropriated illegally moves forward painfully slowly, and has been in process for over 17 years in the Federal Justice system.

In light of such ongoing abuses and threats to Indigenous Peoples around the world, the IITC calls on members of this Commission to support the recommendation submitted to it in resolution 1999/20 by the Sub-Commission on the Promotion and Protection of Human Rights, calling for the appointment of a Special Rapporteur on Indigenous Peoples' issues to monitor, investigate and report on critical situations threatening the human rights, fundamental freedoms and survival of Indigenous Peoples.

Finally, IITC calls upon the state governments where these situations are occurring to report to the Commission regarding the latest developments and the steps they have taken to remedy these critical human rights violations.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/118
21 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11(a), (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION, AND RELIGIOUS INTOLERANCE

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The continued Arbitrary Detention of Leonard Peltier by the United States has been raised for decades in this Commission by the International Indian Treaty Council and many other Non-Governmental Organizations, respected dignitaries, Nobel laureates, religious leaders, governmental entities and elected officials. In April, 1999 Amnesty International recognized that the only feasible option in this case of grave injustice is Mr. Peltier's immediate and unconditional release.

There is no longer doubt that Mr. Peltier, an Ojibway/Lakota Indian, was extradited from Canada and convicted of murder in the United States based upon perjured, falsified and fabricated evidence.

Leonard Peltier was an active member of the American Indian Movement (AIM). AIM activism drew national and international attention to continued violations of Indigenous treaties, particularly the Fort Laramie Treaty between the Lakota Nation and the United States. These violations are documented by Mr. Miguel Alfonso Martinez, the UN Special Rapporteur on Treaties, Agreements and Other Constructive Arrangements between states and indigenous populations. In his latest submission to this Commission, Mr. Martinez documents that the US government's own Indian Clams Commission and Federal Courts admitted that the taking of the Black Hills by the US government blatantly violates the 1868 Fort Laramie Treaty. He quotes the Claims Commission, that, "A more ripe and rank case of dishonorable dealing will never, in all probability be found in our history." E/CN.4/Sub.2/1999/20, paragraph 276.

What began as a peaceful occupation by members of the Lakota Nation and AIM at Wounded Knee, Pine Ridge Lakota Reservation, South Dakota in February 1973 quickly escalated into massive governmental repression, characterized by many as a "reign of terror". The US Federal Bureau of Investigation (FBI) armed and encouraged local paramilitary repression, led intensive local surveillance, infiltration, massive arrests and arbitrary detentions and harassment of AIM membership. It has been documented that sixty-four people were assassinated between 1973 and 1975, mainly AIM members, their supporters and families, children and elders.

The number of actual murders is estimated at close to 200. These deaths were never adequately investigated and no one has ever been charged or prosecuted for these crimes.

In the midst of this climate of fear and repression, on June 26, 1974, two FBI agents and a young Indian man, Mr. Joe Stuntz, were killed during an exchange of gunfire, which began when the armed agents forcefully entered the grounds of a local family's residence.

The US government has never presented credible testimony or forensic evidence to link Mr. Peltier to the FBI agents' deaths, and U.S. officials have admitted as much in federal court. Two other defendants, tried separately, were found innocent on grounds of self-defense. Yet Mr. Peltier remains in federal prison to this day, having served more than 24 years of two consecutive life sentences.

The UN Special Rapporteur on the Question of Torture, Sir Nigel S. Rodley reported to this Commission at its Fifty-fifth Session, an urgent appeal on behalf of Leonard Peltier addressing the inhumane treatment he has continued to receive at the hands of United States prison officials at both Leavenworth and Marion Federal Prisons (E/CN.4/1991/61, para. 751.)

His report describes repeated solitary confinement, deprivation of human contact, beatings and a 20-year denial of much needed medical treatment. Mr. Peltier was finally allowed medical treatment in 1996 for his jaw, which was broken by a beating. After an operation which failed to correct his conditions, and resulted in a 14-hour coma in intensive care, Mr. Peltier was detained in a small segregated cell infested with insects. By the prison surgeon's own admission, prison medical personnel were not capable of treating Mr. Peltier's condition. Mr. Peltier's requests that he be treated by private doctors recommended to him have been repeatedly refused. His jaw is frozen and he is reported in unremitting pain. Special Rapporteur Rodley's inquires to the United States have gone unanswered.

In 1997 IITC filed a communication on behalf of Leonard Peltier with the UN Working Group on Arbitrary Detentions, addressing Mr. Peltier's unjust extradition, trial and conviction, requesting that the Working Group's mandate be exercised in his case. The Working Group has yet to report to the Commission on the status of this investigation.

The IITC urgently call upon the Rapporteur on the Question of Torture and the Working Group on Arbitrary Detentions to visit Mr. Peltier at his place of detention, and call upon the United States to take all measures to facilitate this visit. We urge the United States to respond to Mr. Rodley's inquiries and to heed the words of Federal Judge Haney of the 8th Circuit Court of the United States, with reference to the Leonard Peltier case, that "[The United States] as a nation must treat Native Americans more fairly."

Addressing agenda item 11(e) the International Indian Treaty Council again points out that the same human rights which the United States vehemently defends for Peoples living in other countries are routinely denied for Indigenous Peoples whose ancestral lands are now located within the US borders In his report presented to the 55th Session of the Commission on his visit to the United States, Mr. Abdelfattah Amor, United Nations Special Rapporteur on Religious Intolerance, found that Native American complaints of religious intolerance in the United States "reflect both a real lack of understanding and consideration and an indifference and even hostility on the part of various officials and other parties involved.... with regard to the values and beliefs of the original inhabitants of the United States". E/CN.4/1999/58/Add.1 (Paragraph 62).

In January of this year, the IITC presented Mr. Amor with updates on continued violations pertaining to two issues addressed in his report, the relocation of the Dineh (Navajo) of Black Mesa Arizona from their homelands and the denial of religious freedom for Indigenous Prisoners within the federal and state penal systems. We regret to report to the Rappoprteur and the Commission that such violations have continued in the year since the report was presented.

We remind the Commission of Mr. Amor's finding, that the observance of international law on freedom of religion and its manifestations with regard to Black Mesa has not been heeded. (Paragraph 83). Not only have claims of the Dineh not been taken into account on an equal footing with the economic interests involved (paragraph 82), but the pressures upon the traditional Dineh, many old and infirm, to relocate against their will continue without abatement.

The IITC has been informed that these elders resolve to remain on their homelands in order to continue protecting them through their daily prayers and ceremonies. They will continue to practice their traditional way of life based upon their sacred and inalienable relationship to this land, despite the current February 1, 2000 deadline set for their removal. We strongly urge the Commission to closely monitor this ongoing crisis situation.

The Rapporteur also recommend in his report (paragraph 84) that the end of the practice of forced hair-cutting of Indian prisoners become general policy in United States prisons. However, this practice also has continued unabated. The State of California, for example, continues to enforce this practice as a policy, and continues to punish prisoners for their refusal to submit to the cutting of their hair.

The case of Anthony Alto, a Native American Prisoner who was re-classified and placed in solitary confinement for his refusal to cut his hair, was raised at IITC 's annual conference which took place in South Dakota USA in June 1999. We undertook an inquiry of his case to the Governor of California, who referred our inquiry to the California Department of Corrections.

The response included prison regulations on Religious Programs, none of which address the so-called "grooming regulation", i.e., forced haircutting (NCDR 97/12). The response fails to include the text of this regulation but also does not include the policy under which it is enforced.

The IITC believes that Mr. Amor's report, which recognized the essential relationship between Indigenous Peoples' spirituality, their lands, and their ability to maintain their traditional religious and cultural practices represented a major step forward in the universal application of this most fundamental human right. We urge the Rapporteur on Religious Intolerance and the Commission itself to continue to provide oversight regarding violations of the religious freedoms of Indigenous Peoples in the US and around the world, and to take every opportunity to advance the international community's understanding of Indigenous Peoples' perspectives, experiences, rights and responsibilities in this regard.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/119
22 February 2000

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31

[31 January 2000]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Everyone recognizes that indigenous women in Mexican society are doubly oppressed, both because they are indigenous and because they are women. Overcoming these challenges is an urgent goal for the United Nations and for Mexican society as a whole.

Indigenous women's struggle for recognition of their rights and validation of their role, both in and out of their communities, is an integral part of the struggle being waged today by the indigenous peoples of Mexico, their brothers and companions, their men, all are fighting together against racism and discrimination and for the enjoyment and exercise of human rights and fundamental freedoms.

Inequality and discrimination are palpable in the conditions to which indigenous peoples are subjected. They live under the harshest and most inhuman conditions of marginality and poverty.

In the municipalities with a majority of indigenous people the illiteracy rate is 43 per cent, (three times the national average), 58 per cent of 5-year-olds do not attend school and nearly a third of the population from 6 to 14 years of age cannot read or write. The illiteracy rate among indigenous women is over 60 per cent.

Violence towards women in Mexico has worsened, and spread to the Government in 1994, when the Chiapas Indian uprising took place. The uprising revealed the two faces of Mexico, mestizo Mexico and indigenous Mexico, and the marked inequalities, harassment and persecution and the rape of indigenous women.

In the most highly militarized regions, such as Guerrero, Oaxaca, Chiapas and the State of Hidalgo, men are not the only ones to suffer ill-treatment and human rights violations. Indigenous women are the favourite "war booty" of the police, army, armed paramilitary gangs and Guardia Blanca. They are used to violate and abuse the dignity and integrity of an entire people. They are used to punish the men fighting for justice for their people.

A few months after the Zapatista uprising a case of rape with violence was reported against three indigenous Tzeltal women by members of the Mexican army at a military compound near the municipality of Altamirano. 20-year-old Maria Teresa, 18-year-old Cristina and 16-year-old Maria Méndez, who were tortured.

Maria Teresa told how an argument developed among those waiting in the rest room at the post. "They were falling all over themselves to stay." When they closed the door they ordered them to "speak Spanish"; "if you stay the night you'll be safe"; the argument became more and more heated, until "they threw themselves on top of us". The three sisters stated that they were raped by 6 or 7 soldiers while the rest "just stood by".

Human rights bodies submitted a criminal complaint against the soldiers in question for rape with violence, improper use of public office, abuse of authority, threats, intimidation and related offences. On 1 July 1994, the Ministry of National Defence (SEDENA) rejected the charges against the military personnel involved in the case and threatened to submit complaints against those who, in the words of the army, had "slandered" the institution.

In September 1994 the case was transferred to the military court. At a meeting with representatives of Amnesty International in November 1995, the SEDENA military authorities explained that the three Tzeltal women had not answered a judicial summons issued by the military court hearing the case for the purpose of confirming their testimony.

In April 1999 a similar incident took place, in the Mixteca indigenous community of Barrio Nuevo San José, where two women, aged 30 and 60, were raped by military personnel who had burst into the community saying they were "looking for drug traffickers".

There is an ongoing land conflict between the communities of Tezontepec de Aldama, and Mixquiahuala, both in the State of Hidalgo; this problem could have been resolved peacefully by the people in question.

However, the authorities intervened. The Governor of the State of Hidalgo, Manuel Angel Nuñez Soto, promised to compensate the injured parties, build a clinic and provide the peasants with tractors, but did not follow through. In January 2000, the dissident members of the community of Mixquiahuala burst into Tezontepec, giving the police a pretext for entering Tezontepec, conducting searches and creating confusion.

They terrorized the women, threatened them with firearms, broke windows, destroyed mattresses and fired shots to frighten them. It has not been verified whether any cases of rape had taken place up to that point.

The Higher Education Institute, called the Mexe Hidalgo, is attended by some students from low-income families, mostly indigenous and peasant families. They are conducting a strike, with a list of demands aimed at improving their facilities, such as ending the Hidalgo State Government's threat to close the school. During the strike, the police evicted them from the premises, and the female students were attacked, their breasts were fondled and they were beaten.

Those involved in these attacks and rapes are members of the federal army, both enlisted men and officers, and the police. These acts are somewhat more than "uncontrollable" acts of war, according to the psychology of warfare, they are an attempt to undermine "the enemy's morale" by focusing actions on the most vulnerable sectors of the society.

In this situation, women represent the Achilles' heel for attacking the dignity and morale of the men, and the torment inflicted on the women is crueller, more inhuman and more degrading. The methods of torture are directed at their sexual and ethnic identity and their physical integrity.

There is room to cite only a few cases in this short statement. Many cases are not reported for cultural reasons or because of distrust of the authorities. Each indigenous community, each family, suffers, if not rape, then a deep and constant fear of rape. Violence against indigenous women in Mexico has intensified.

The issue of violence against women mobilized civil society and Governments, meeting at the Second World Conference on Human Rights in Vienna from 14 to 25 June 1993, which

recognized, in the section of the Vienna Declaration and Programme of Action entitled "The equal status and human rights of women" the importance and timeliness of integrating the advancement of women into the international human rights system.

The World Conference urged the full and equal enjoyment by women of human rights and that human rights should be a priority for Governments and for the United Nations. In particular, it stressed the importance of working towards the elimination of violence against women in public and private life and the elimination of gender bias in the administration of justice. It urged the eradication of all forms of discrimination against women, both hidden and overt, and the eradication of any conflicts which might arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

The Declaration stated that violations of the human rights of women in situations of armed conflict were violations of the fundamental principles of international human rights and humanitarian law, and that violations of that kind included murder, systematic rape, sexual slavery and forced pregnancy.

Such crimes meet with indulgence from the authorities, who because of their male-chauvinistic, self-centred and sexist attitude know no other way of behaving. They are not aware of a need to change. This attitude is part of their policy of controlling power. Typical of the Mexican Government is its tendency to sign agreements and not fulfil them, while saying the opposite and inviting United Nations officials in order to show them a disguised version of reality. The human rights and fundamental freedoms of indigenous people, especially indigenous women, in Mexico, are systematically violated in the absence of a Government willing to take responsibility for effective measures to put an end to such impunity.

Indigenous people, especially indigenous women, urge the United Nations authorities to place Mexico under permanent observation in connection with its administration of justice, indeed its systematic violation of the international instruments to which it is a party. It is necessary to reverse the distrust and cynicism towards the judical system and the prevailing impunity.

Women's organizations are also requesting direct United Nations observation of the situation in Chiapas and the growing militarization of the indigenous communities in that region and other parts of Mexico, the financing of paramilitary groups and the intimidation to which defenders of human rights and women's rights are subjected.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/120
22 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Joint written statement*/ submitted by the Indigenous World Association, the International Indian Treaty Council and the International Organization of Indigenous Resource Development, non-governmental organizations in special consultative status, the Indian Law Resource Centre and the Saami Council, non-governmental organizations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The following is submitted as a joint consensus statement of the Indigenous Caucus at the United Nations Commission on Human Rights Inter-sessional working group established in accordance with Commission on Human Rights resolution 1995/32 in its Fifth Session, 18-29 October 1999:

POSITION OF INDIGENOUS PEOPLES
IN REGARD TO THE USE OF THE TERM INDIGENOUS PEOPLES IN THE UNITED NATIONS DRAFT DECLARATION FOR THE RIGHTS OF INDIGENOUS PEOPLES

THE CONSISTENT POSITION OF INDIGENOUS PEOPLES' REPRESENTATIVES

Since the establishment of the Working Group on Indigenous Populations in 1982, indigenous representatives have consistently asserted the critical importance of accurately identifying indigenous peoples as peoples in the work of the United Nations. There can be no doubt that we are peoples with distinct historical, political and cultural identities and will remain so. We are united by our histories as distinct societies, as well as by our languages, laws and traditions. In addition, the profound social, cultural, economic and spiritual relationships of indigenous peoples with our lands, territories and resources are unique. Indigenous peoples are unquestionably peoples in every legal, political, social, cultural and ethnological meaning of the term. It would be discriminatory, illogical and unscientific to identify us in the United Nations Draft Declaration on the Rights of Indigenous Peoples as anything less than peoples.

Our status as peoples is fundamental to the recognition of our right of self-determination in all its collective political, economic, social, cultural and spiritual dimensions. To deny our right to define ourselves and to be recognised as indigenous peoples is to deny a fundamental expression of our right to self-determination.

In 1989, in its General Comment No.18 (37) on *Non-discrimination*, the Human Rights Committee stated in par. 7:

'...the Committee believes that the term 'discrimination' as used in the Covenant should
be understood to imply any distinction, exclusion, restriction or preference which is based on any
ground such as race, colour, sex, language, religion, political or other opinion, national or social
origin, property, birth or other status, and which has the purpose or effect of nullifying or
impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights
and freedoms.'

Regrettably, certain States persist in seeking to deny or otherwise restrict the status of indigenous peoples as 'peoples'. This is done to deny us the recognition and enjoyment of our right to self-determination on an equal footing with other peoples. These positions are discriminatory and, therefore, run counter to the most fundamental purposes and principles of the United Nations.

We hereby request, as we have done in the past, that Member States of the United Nations fully respect the U.N. Charter, the International Covenants and other human rights instruments in the present standard-setting process. In particular, Member States have made solemn and sacred commitments by adopting the UN Charter, the constitutive document of the United Nations. In accordance with article 1(3) of the Charter, one of the central purposes of the United Nations is to:

> *"achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."*

The International Covenants on Human Rights also impose binding legal obligations, providing in common article 1(3) that:

> *"The States Parties to the present Covenant . . . shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."*

Clearly, States are obliged to refrain from any action which undermines or violates the constitution of the United Nations. In regard to recognition of our status as 'peoples' and our right to self-determination, we call upon the Commission on Human Rights and all States present at this session to unequivocally resist any attempts by individual States to contravene UN Charter purposes and principles by proposing a distinction based on race or other prohibited grounds. In particular, by proposing to square bracket the term indigenous peoples, some States are seeking to open the door to developing double standards that are clearly discriminatory.

We continue to insist that the United Nations apply its own standards universally and equally, that it recognize and respect the same fundamental human right to self-determination to us as for other peoples in the world, that it act without prejudice and without discrimination. We cannot agree, now or at any future time in consideration of the Draft Declaration, to any qualification, explanation, definition, bracketing, parenthesising or footnoting of the term indigenous peoples or peoples.

INTERNATIONAL LEGAL USAGE

The term indigenous peoples is well-established in international legal practice. It has been consistently employed by the United Nations' own expert human rights treaty bodies, the

Inter-American Commission on Human Rights, the institutions of the European Union, the World Bank and the Asian Bank. Examples of such international legal usage can be found in:

- the Concluding Observations of the Committee on the Elimination of Racial Discrimination, and General Recommendation XXIII(51) concerning Indigenous Peoples adopted by that Committee on 18 August 1997
- the views and Concluding Observations of the Human Rights Committee in relation to implementation of the International Covenant on Civil and Political Rights
- the reports and decisions of the Inter-American Commission on Human Rights
- the resolutions of the European Parliament, and the Council of Ministers of the European Union
- the World Bank's Operational Directive 4.20
- the Asian Development Bank's 1997 policy on indigenous peoples

DOMESTIC USAGE

There are numerous examples of use of the terms indigenous peoples and Aboriginal peoples in the practice of States. These include constitutional guarantees, legislative enactments, judicial decisions, negotiated treaties and agreements, and national and local policy. Examples include:

- Australia's 1993 Native Title Act
- the Constitution of Bolivia (Article 171), the Popular Participation Law of Bolivia, INRA Law of Bolivia, Educational Reform, Environment and Hydrocarbon of Bolivia
- the Commission on Indigenous Peoples of the National Congress of Peru, 1999
- Section 35 of the Canadian Constitution Act, 1982
- the Constitution of Colombia (Article 246)
- the Agreement on Identity and Rights of Indigenous Peoples of Guatemala, 1994
- the Constitution of Malaysia (Article 151)
- Denmark's 1994 strategy for support to indigenous peoples
- the Political Constitution of the Republic of Ecuador (Article 83)
- the Constitution of Mexico (Article 4)
- the Constitution of Nicaragua (Article 5)
- the Constitution of Paraguay (Article 62)
- Germany's 1996 policy for indigenous peoples in Latin America
- Netherlands' 1993 policy on indigenous peoples
- Panama's environmental law
- the Philippines 1997 Indigenous Peoples' Rights Act
- the United Kingdom's 1995 Guidance on Ethnicity, Ethnic Minorities and Indigenous Peoples
- Spain's 1997 strategy for cooperation with indigenous peoples
- Switzerland's 1998 action for indigenous peoples

- the United States Code: 7 U.S.C. Section 1738k(d)(1); Title 22 (9 separate Sections), 42 U.S.C. Section 11701(17) and the United States S. Con. Res. 44, 103d Cong., 1st Sess. (1993)

PRACTICE IN THE COMMISSION ON HUMAN RIGHTS WORKING GROUP ON THE DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

Since the establishment of the Commission on Human Rights Working Group on the Draft Declaration on the Rights of Indigenous Peoples in 1995, the following States have accepted usage of the term indigenous peoples: Angola, Argentina, Australia, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, El Salvador, Estonia, Fiji, Finland, Guatemala, Malaysia, Mexico, New Zealand, Norway, Pakistan, Peru, the Philippines, the Russian Federation, Spain, Sweden, Switzerland and Venezuela.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/121
22 February 2000
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 17(d) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: SCIENCE AND ENVIRONMENT

Written statement*/ submitted by the International Indian Treaty Council, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Persistent Organic Pollutants (POPs) are man-made carbon-based chemical compounds. They bioaccumulate in the tissues of living organisms. They are toxic, causing adverse effects to human health and the natural environment. POPs persist for long periods of time before they decompose. Even at low levels of primary contamination, POPs concentrate over time in the human body.

POPs include industrial chemicals like PCBs, pesticides like DDT and by-products of industrial manufacturing and waste disposal, such as dioxins. A growing body of scientific evidence indicates that POPs are among the most toxic substances ever created, causing cancer and birth defects. They have an adverse impact on humans' abilities to have children by limiting the normal growth of the reproductive organs. Clinical health effects include a marked increase in diabetes, hormone-based disorders, behavioral and learning disabilities. POPs have been linked to central nervous system damage, as well as diseases and weakening of the immune system.

POPs travel long distances in air and water, reaching virtually very region of the world. They can eventually accumulate in high concentrations thousands of kilometers from where they were originally released.

Humans are generally exposed to POPs through water and food. Workers and residents of communities near POPs sources are also exposed through inhalation and dermal contact. POPs exposures are highly pronounced in peoples whose diets include large amounts of wild food and especially fish, marine mammals and other aquatic resources.

The widespread proliferation of POPS in the atmosphere and ecosystems presents a particularly critical threat to Indigenous peoples, whose survival, health and well being depends on their traditional relationships with the land, and the food that comes from the land which has sustained them since time immemorial. Subsistence ways of life including hunting, fishing, gathering and traditional farming provides the cultural, spiritual, social and economic foundation for Indigenous Peoples throughout the world.

POPs tend to deposit in the colder regions of the world where the air is denser. They store in the fatty tissues of fish, marine and land mammals, which form a large part of the diet of Arctic Peoples. Some of the best-documented cases of highly exposed populations are Indigenous peoples living in Polar Regions far distant from most POPs sources. The Inuit living on Baffin Island carry seven times more PCBs in their body than peoples living in lower latitudes. The Canadian Arctic Contaminants Assessment Report prepared by all eight Arctic nations showed that levels of POPs in some Inuit is ten to twenty times greater than those tested in warmer temperate regions. Residues of POPs, such as PCBs, DDT, and dioxins were found in blood, fat and mother's breast milk.

POPS pass through the mother's placenta to her unborn child. Research on children and women who regularly eat large amounts of POPs - contaminated fish from Lake Michigan of the Great Lakes of North America resulting from dumping of industrial

wastes, found observable and measurable behavioral effects and learning deficits passed on from one generation to the next. The quality of life and health of the next generation, and the generations to come, is under serious threat.

In the United States and Canada, Mohawks Indians are being exposed to industrial emissions such as PCBs through consuming contaminated fish and wildlife, drinking water sources, soil, dermal contact from swimming, and consumption of breast milk by infants. The Mohawk women carry over 10,000 parts per million of PCB in their bodies that is passed on to their future generations in the womb and through breast milk.

We remind the members that the Commission of the Convention on the Rights of the Child, article 24, recognizes the right of children to the enjoyment of the highest standard of health and mandates that state parties " shall pursue full implementation of this right " and take appropriate measures to combat disease and malnutrition... " through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution". The IITC and IEN urge the state parties to this Convention to seriously reflect upon their responsibilities in this regard.

In the warmer climates of Mexico and Central America, DDT and other hazardous commercial pesticides banned for use in northern industrialized countries are still being imported and used in agricultural practices, which in many countries still include aerial spraying. Farm workers, many times Indigenous Peoples who seek employment on farms and plantations, are usually not provided with warnings or protective gear when they are given pesticide tanks to carry on their backs for spraying crops. The IITC has received direct testimony from Indigenous campesinos in Sonora Mexico, describing the fate of coworkers who carried such tanks, which included skin burns, blisters, rashes, painful illnesses and deaths.

In 1997 in Sonora, Mexico, a study was conducted by a University of Arizona scientist in homelands of the Yaqui Indians, an area targeted by the so-called " green revolution " policies of the Mexican Rural Bank for high pesticide and chemical fertilizer use since the late 1940's. Once again, children were the most seriously affected. This study detected high levels of multiple pesticides in the cord blood of newborns and in mothers' milk. The study found severe learning and development disabilities in Yaqui children living in farming areas where years of high pesticide use contaminated water and soil, compared to children from the hillside areas with less intensive or no exposure.

Stockpiles of PCB, DDT and other chemicals are found in southern countries and Pacific islands near to Indigenous Peoples' communities and food sources. Many of these stockpiles are at military bases and abandoned defense facilities that are leaking chemical substances into the environment.

Clearly, the proliferation of POPs threatens to destroy the health, culture, society and fundamental human rights of Indigenous Peoples. We remind the Commission and all the UN members that Article 1, paragraph 2 in common of the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and

Cultural Rights states that " in no case may a people be deprived of its own means of subsistence".

In the US, Indigenous fishing Peoples have been informed by the Environmental Protection Agency that the fish they have always eaten are no longer safe to eat due to POPs contamination. Indigenous Peoples are presented with a forced choice between abandoning their traditional means of subsistence, or continuing to eat it and be poisoned.

Given the immense stakes, swift action is needed to eliminate the use and production of chemicals known or suspected to have significant health impacts on human life and the environment. Responsibility rests with the corporations that produce POPs and other toxics, and with the governments responsible for monitoring and legalizing their production, use and disposal.

Precautionary principle mandates that toxics should not be produced or used without prior proof that they pose no threat to human health or the environment. The current process of "risk assessment" proscribes waiting until health problems arise and " proof " the dangers can be documented through extensive studies, usually long after a substance has been in use for years. The current concept of " acceptable risk" employed by industry and governments is based on decisions about how many human deaths are "acceptable", as compared with the potential "benefits" of a chemical or compound. Neither human rights nor the principle of informed prior consent have any place in this model.

In June, 1998 UNEP held the first Intergovernmental Negotiating Committee (INC) meetings to begin work on an international legally binding instrument for implementing international action on certain POPs, beginning with 12 of the most toxic. Indigenous Peoples and NGO's have been actively participating in these meetings pressing for a comprehensive, rigorous and verifiable global treaty on POPs.

Indigenous peoples continue to participate in the INC process to express concerns for safeguarding the environment and traditional subsistence resources, and to defend the fundamental principles of human rights in this regard. Cleary, the impacts of the continued production and proliferation of Persistent Organic Pollutants prevent Indigenous Peoples from the full enjoyment of the highest attainable human rights standards as recognized by existing international instruments.

We strongly encourage the international community and appropriate United Nations bodies to fund POPs- related research, including assisting developing countries shift to effective alternatives, for example alternatives for DDT use in mosquito eradication programs, and to coordinate financial, technological, and capacity-building assistance programs with support from developed countries, multilateral development banks and the private sector.

Most critically, we urge the 56th Session of the Commission on Human Rights to adopt a resolution recognizing the human rights impacts of Persistent Organic Pollutants encouraging participants in the INC process to take the devastating human rights impacts of POPs into consideration in all aspects of their deliberations.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/122
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 6 of the provisional agenda

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Violation of Human Rights in Ethiopia

Since 1994 Ethiopians have had a democratic constitution that guarantees their country's citizens full civil and human rights. Despite this constitution, which many regard as exemplary, human rights violations have increased in number and severity. The victims have in particular been members of the Oromo community, numbering 25 million and representing approximately 40% of the total population. If intellectuals, teachers, journalists, aid agency workers, artists, human rights activitists and peasant farmers are subjected to human rights abuses solely on the basis of their ethnic origin, then Gesellschaft für bedrohte Völker believes that the Ethiopian authorities are guilty of racism. The widespread persecution suffered by members of this ethnic community, who are collectively suspected of being supporters of the opposition Oromo Liberation Front (OLF) liberation movement, has not been diminished by the fact that the incumbent President of Ethiopia, Negasso Gidada, is an Oromo.

Police harrassment, arbitrary arrests without charge or trial, torture, "disappearances" and extrajudicial executions are an everyday experience for many Oromo. Oromo human rights organisations have documented 2,500 politically-inspired killings of Oromo and over 800 cases of disappearances in recent years. Peasant farmers, rarely if ever politically active, have particularly frequently figured among the victims. For example Soorsaa Gammoo, a farmer from Genale (Bale), died in Karchale prison in Addis Abeba on 5 August 1999 as a consequence of torture endured since he was imprisoned in 1995. Two of his sons have disappeared and not been seen since. On 14 August 1999 Obbo Hinsarmu, a member of the Oromo self-help and cultural organisation Macha Tulama, was detained by members of the security forces. We have followed the case of Mossisa Duressa with particular concern. The 55-year-old chairperson of the Ethiopian Red Cross in Nekemte and personnel director of the Mekane Yesus Church was arrested on 15 August 1999. Police and security authorities have refused to reveal his whereabouts. The same day the physician Dr Tassew Begashaw was also imprisoned, accused of having treated alleged members of the OLF.

In the light of these grave violations of human rights we are calling on the UN Commission for Human Rights to urge Ethiopians to cease treating the Oromo as collectively suspected of being OLF supporters and stop persecuting them solely on grounds of their ethnic origin immediately. In addition the Ethiopian government should be urged to stop harassing and outlawing Oromo aid and human rights organisations, to release political prisoners without delay and to ensure that the Oromo too are guaranteed the civil and human rights enshrined in the Ethiopian constitution.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/123
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 7 of the provisional agenda

THE RIGHT TO DEVELOPMENT

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The Situation of the Mapuche in Chile

The term Mapuche means "People of the Earth". The Mapuche are the largest aboriginal group in Chile. They originally occupied an area stretching from the Maule region to the Island of Chiloé. According to the 1992 census 928,060 people over 14 years old identified themselves as Mapuche. However only approximately 15 % still live in what remains of their historical homeland; today most of the Mapuche (around 60 %) live in towns, three-quarters of them in the capital, Santiago (predominantly in the poorer neighbourhoods of Cerro Navia, Pudahuel, Peñalolen, La Pintana, Maipu and La Florida). As the census included only persons over 14 years old, the actual number of Mapuche may be assumed to be higher than the total given .

Shortage of land is one of the basic reasons why the Mapuche have left their area of origin. The chief causes of this shortage were European colonisation, illegal settlement, fraudulent land purchase agreements, over-exploitation of natural resources and in more recent times Decrees issued by the Pinochet dictatorship (Nos. 2568 and 2750) which compulsorily privatised Mapuche land led to the dispersal of most of the Mapuche communities. No compensation whatsoever has been paid to date.

Indications of domestic, structurally determined underdevelopment

The Mapuche living in towns see themselves as subjected to a variety of types of stereotyping by Chilean society. The non-recognition of their group identity automatically precludes the possibility of taking decisions for themselves on matters affecting indigenous peoples.

For decades governments have attempted to impose the cultural values of the unified state by their efforts for example to devalue Mapuche culture and bring about the disappearance of the Mapudungun language while at the same time excluding them from decision-making processes. Mapuche organisations possess no facilities where Mapuche can meet together and discover a communal identity in the context of their traditional culture, enabling an urban Mapuche community to evolve. Social, cultural and religious traditions are orally transmitted, in dialogue, communal life and the transmission of knowledge from one generation to the next.

Those religious ceremonies that are permitted by the authorities are kept under observation by the police, allegedly in order to avoid possible disturbances. The nature of this supervision and the procedures involved (searches for weapons) are humiliating. The Mapuche's traditions and rituals are openly referred to as "devilry" while they are discriminated against as "heathens".

This lack of concern for the Mapuche's autonomous development penetrates deep into Chilean society. It comes close to being an integral element of the dominant culture, reflected in a variety of social institutions - the education system, the health service, the judicial system, etc.

So for example Mapuche children are given no opportunity to learn their own language at school, let alone receive bilingual teaching, or to discover more about their own culture, traditions and values. On the contrary the national curriculum communicates a very negative image of the Mapuche, who are portrayed, like Native Americans in North America, as subservient and alcohol-dependent. The illiteracy rate among the Mapuche is as high as 10% while the national level is around 4%.

In Santiago there is no system of multicultural education, no libraries, archives or any teaching materials whatsoever that take account of the Mapuche's cultural identity or offer them the scope to develop their own solutions to their problems. There is a need for research to be undertaken with a view to promoting the revival of the Mapuche's traditions. Current social work practices fail to take proper account of the specific social, psychological and cultural characteristics of the Mapuche. Although Art. 28 of the *Ley Indígena* stipulates that areas with a high Mapuche population density should be served by TV and radio broadcasts in their own language - and there are over 400,000 Mapuche living in Santiago - in reality none are provided. It is not surprising that the young try to avoid being identified as members of an indigenous people as they are ashamed of their identity.

The health service pays no regard to the traditional concept of health in the Mapuche culture, which is based on the use of herbal medicines and a holistic approach; in contrast to other South American countries such as Columbia there is no legal requirement to provide a culturally appropriate health care service. There are not even any health centres tnat offer Mapuche patients treatment in their own Mapudungun language.

As far as the judicial system is concerned neither the courts nor the public prosecutor's office allow evidence to be given in Mapudungun, not even in areas with a large Mapuche population. The only institutional instance providing a legal forum for specifically indigenous matters is CONADI and then only in respect of issues relating to land, and then only applying to rural areas and persons who satisfy the classic definition of a Mapuche. There is no equivalent procedure for dealing with other culturally specific problems such as inheritance disputes from an indigenous perspective.

The system of legal education does not offer any courses in the customary rights deriving from Mapuche law. Nor, of course, do local courts have the discretion to issue rulings based on Mapuche law. Unlike in other countries, such as Colombia, the office of the Chilean ombudsman has no section specifically concerned with indigenous rights which would allow the development of a separate system of law.

Gesellschaft für bedrohte Völker is asking the UN Human Rights Commission to urge the Chilean government finally to recognise the Mapuche as an aboriginal people of Chile. In addition, Article 29 of the *Ley Indígena* (Protection of the historical heritage of indigenous cultures in Chile) should be used to help preserve the Mapuche culture in the urban environment and enable the Mapuche to secure their rights as an indigenous people and protect their identity, their culture and their traditions before they are destroyed. Finally the enforced privatisation of Mapuche land begun during the Pinochet dictatorship must be reversed and compensation provided for the use of that land that has had to be foregone in the meanwhile.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/124
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

1. The tragedy of Tibet, as is well-known, stems from more than 40 years of military occupation and colonial rule by the People's Republic of China. This undeniable fact must form part of any discussion of Tibet since it embodies the sad experience of the six million-strong Tibetan people. It is the continuing inhuman suffering of the Tibetan people that has led our organisation to raise the human rights situation in Tibet within the human rights forums of the United Nations.

2. Members of the Tibetan Youth Congress from India embarked on a Hunger Strike in Geneva during the 55th session of the Commission on Human Rights, appealing to the Commission to help end human rights violations in Tibet. Regrettably the Commission decided to take no action on the draft resolution on China introduced by the United States of America and co-sponsored by Poland. In this connection it is deplorable that last year a distinguished Asian Ambassador, speaking in support of the Chinese motion to take no action, referred to the Commission on Human Rights's scrutiny of the human rights situation in Tibet and China as a "disease". In actual fact the Commission on Human Rights is the forum in which a cure for the "disease" of human rights violations. as perpetrated by countries like China, is most likely to be found.

3. The lack of any concrete action by the international community aimed at resolving the issue of Tibet is causing a build-up of frustration amongst Tibetans, the younger generation in particular. Tibetans are unable to understand why the rest of the world ignores one of the most notable examples of non-violent struggle in our time. "This frustration stems from the fact that the Tibetan people, with their unique cultural heritage, are being gradually wiped out from the face of the earth. This is a tragedy for the whole world as the Tibetan culture has tremendous potential to benefit the world, most of all millions of Chinese brothers and sistersHis Holiness the Dalai Lama said on 28 April 1998.

4. Over 1,000 individually identified Tibetan political prisoners are currently detained inside Tibet. Uncertainty as to the whereabouts of 10-year-old Gedhun Choekyi Nyima, Eleventh Panchen Lama and the world youngest political prisoner, and the Chinese authorities' refusal to disclose where he is continue to cause concern. In recent years the Chinese authorities have made contradictory statements on the subject. China refuses to provide the UN Working Group on Enforced or Involuntary Disappearances and the UN Committee on the Rights of the Child with specific details of his whereabouts.

5. A Chinese website recently published an article suggesting that the young Panchen Lama had died in Lanzhou Prison No. 1 in Gansu Province. This unconfirmed news led to increased international anxiety concerning the fate of one of the most important religious figures in Tibet. The article by Ma Zhungliang, a correspondent for the Free China News Agency, revealed that the body of a young boy resembling the imprisoned Gedhun Choekyi Nyima had secretly been cremated by members of the Armed Police Force on 19 October 1999. The Chinese authorities denied the report as pure rumour. The Chinese Deputy Foreign Minister Wang Zingfan told Mr. John Battle, a U.K. Foreign Office Minister, that according to his latest information, the boy was living with his family in an unnamed location, British officials announced on 12 November 1999.

6. The politicisation of Tibet's religious institutions continues with hundreds of communist cadres "re-educating" monks and nuns by forcing them to sign written declarations affirming that "Tibet is a part of China" and denouncing His Holiness the Dalai Lama. The Chinese authorities have launched an anti-Dalai Lama campaign of public denunciation of His Holiness the Dalai Lama as a religious leader. In 1999 the Chinese authorities imposed particularly harsh measures aimed at preventing Tibetans celebrating the birthday of the Dalai Lama. For example the Lhasa city authorities held a rally commending officials for their handling of the "Trung Lha Yarsol" rituals (referring to the Dalai

Lama's Birthday). Tibet Television's broadcast of the meeting on 2 August showed Guo Jinlong telling the rally that "The successful handling of the Trung Lha Yarsol illegal activities by Lhasa City Council shows that the city has a Party Committee and Government offering strong leadership and that valuable organisational work has been done at grass roots level." A statement issued on 14 July 1999 even claimed that the birthday rituals undermined tourism: "The "Trung Lha Yarsol" practice is causing immense harm to the creation of a favourable image of the city of Lhasa …It also coincides with the vital tourist season when guests from abroad as well as from within the country start to arrive in Lhasa. Practices like throwing 'tsampa' flour at passers-by and blocking the path of travellers constitute anti-social behaviour that undermines the city's image and reputation."

7. Economically, socially and culturally Tibetan people continue to face severe discrimination. For example, most skilled jobs are held by Chinese settlers while Tibetans perform most of the menial tasks. China's taxation policy is causing increasing problems for the rural population in Tibet. Unemployment among Tibetan youth is rising at an alarming rate with prostitution on the increase among young Tibetan girls. "Social Evils", a recent report by Tibet Information Network, a London-based organisation monitoring the situation in Tibet, stated that "A conservative estimate of the total number of brothels where prostitutes can ply their trade in Lhasa municipality is approximately 1,000, but this is only taking into account…those places whose sole function is as a place where prostitutes can carry out their services to clients. But, in addition to these there is a second, and at least equally prevalent, form of establishment in Lhasa which effectively function as a brothel and is therefore defined as such by many Tibetans. These are the multiple bars, restaurants, clubs and karaoke bars that are often full of girls openly offering their services on the premises, many of which have back rooms where the prostitutes can take their clients." The report refers to an unofficial survey conducted by a Tibetan in 1998 which found 658 brothels and 238 dance halls and karaoke bars in 18 of the main streets of Lhasa. Assuming that the city has a population of 200,000, this figure of 658 brothels represent one brothel for every 304 people in the Tibetan capital - an extremely high density. Since it is calculated on the basis of 18 streets only rather than the whole city, the total number is likely to be higher.

8. Where education is concerned, illiteracy levels are shockingly high even though the Chinese authorities claim to have achieved "earthshaking progress" in all fields since Tibet's "peaceful liberation". A 1997 study conducted in India found that 96% of the children interviewed had fled Tibet for educational reasons, generally under extremely hazardous conditions and at great personal and financial cost to their family. 93% of these children had not been taught anything about Tibetan culture.

In the early 1980s the Chinese authorities reportedly sought to reinstate Tibetan as the official language of the so-called "Tibet Autonomous Region (TAR)". Since the majority of the region's population do not speak Chinese, the use of Tibetan was deemed to be important not merely for the preservation of Tibetan culture but for economic development and the dissemination of government policy and information. However, in spite of legislation and government directives on the use of 'minority' languages, implementation of the Tibetan language policy has been relatively unsuccessful. At the 1991 Conference on Tibetan Language Teaching, TAR Deputy Party Secretary Tenzin described the implementation of the Tibetan language policy as 'not working and at a stalemate'.

9. The Chinese authorities have signed the Convention on Economic, Social and Cultural Rights and the Convention on Civil and Political Rights. These positive steps, however, should not be construed as in any way signifying a major improvement in the overall human rights situation in China or Tibet. If Beijing is sincere in maintaining that human rights issues must be resolved through dialogue and co-operation China should now ratify the two Covenants without further delay.

10. We also welcome the fact that in recent years the Chinese authorities have issued invitations to many foreign delegations to visit Tibet, including UN human rights officials. We are hopeful that the Office of the High Commissioner for Human Rights will receive a positive agreement from the Chinese authorities to the call for the prompt signature of the MOU to follow up the MOI signed in 1998. Meanwhile it is hoped that the Special Rapporteur on Torture will be granted full and free access during his official mission to China and Tibet. The Special Rapporteur's mission to Tibet will be welcomed by human rights organisations, particularly since every year torture continues to claim the lives of Tibetan political prisoners. Likwise an invitation to the Special Rapporteur on Religious Intolerance to conduct a follow-up mission to China and Tibet, as the Special Rapporteur wishes, would signal a greater willingness on the part of Beijing to co-operate with this specific mechanism of the Commission on Human Rights. Nevertheless, we continue to deplore the fact that China is still refusing to allow independent access to foreign delegations who wish to observe the situation in Tibet. We are also deeply concerned by China's policy of not issuing invitations to human rights organisations such as Amnesty International and the International Commission of Jurists to visit Tibet.

11. For more than 40 years the Tibetan people have been denied their economic, social, cultural, civil and political rights. Tibetans are unable to assemble peacefully, to express their opinions freely or to form independent non-governmental organisations. There is no due process of law in their country and violations of human rights are committed on a daily basis. The Tibetans are denied their collective rights as a separate people.

12. In conclusion, we appeal to the Commission on Human Rights to monitor the human rights situation in Tibet closely and take appropriate concrete measures by censuring China for its human rights failures in Tibet. If the Commission on Human Rights wishes to preserve its credibility in the new millennium it can no longer ignore the gross and systematic violations being committed in Tibet.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/125
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Economic, Social and Cultural Rights of Tamils in Sri Lanka

The armed confrontation between the government's security forces and the Tamils in the North and East of the country has claimed since 1983 more than 55.000 lives (90 % of them civilians), over 700 000 internally displaced persons and close to half a million expatriates: almost all of the victims are Tamils. The conflict is the result of the long standing violations of the rights of the Tamils by successive governments. And, as the 1998 report of the Committee on Economic, Social and Cultural Rights observes, discrimination remains the central issue in the armed conflict in Sri Lanka.

The history of independent Ceylon/Sri Lanka is the history of the majority community of Sinhalese (74% of the population) imposing itself by means of its electoral weight as the ‚nation' at the expense of the other ethnic-cultural groups [mostly Tamil speaking Muslims (7.6%) and Tamils (18.1%), seven out of ten belonging to the indigenous ‚Sri Lankan Tamils' concentrated in the North-East as against the remaining 30% consisting of ‚Indian Tamils'in the up-country].

- Some of the very first acts after independence was achieved in 1948 were directed against the **Indian Tamils,** mostly descendents from 19th cent. migrants from India for work on the plantations in the Southern and Central part of the island, who then formed one half of the Tamil population. Thus, not only were existing restrictions in their access to certain professions, such as agriculture, fishing and transport, confirmed, but new measures were taken which while reducing the number of respective Tamil managing personnel accorded preferential employment in the public sector and on the plantations to Sinhalese. The "Citizenship Act" of 1948 followed by the "Indian and Pakistani Residents Act" and the "Ceylon (parliamentary elections) Amendment Act", both of 1949, rendered the majority of Indian Tamils first stateless, made their naturalisation almost impossible, and deprived them of the right to vote which they had enjoyed for more than 20 years. As a result, the political clout of the Tamils was drastically diminished and new employment possibilities for Sinhalese were openend up (against today's share of 1/3, the Sinhalese represented less than 1/8 of the estate labour force between 1946 and 1953). Eventually, a majority of Indian Tamils was made to leave the country consequent upon various agreements with India, so much so that the share of Indian Tamils in Sri Lanka fell from 12 % (1946/1953) to 5,5% of the population. While these were to obtain Sri Lankan citizenship, there are still today 85.000 Tamils of Indian origin possessing neither Indian nor Sri Lankan citizenship about whose denial of fundamental human rights, including access to basic services such as education, the Committee on Economic, Social and Cultural Rights expressed its concern in the concluding comments of its June 1998 report on Sri Lanka.

- Next came the turn of the **Sri Lankan Tamils**. Separated by culture (Dravidian), language (Tamil), religion (Hinduism), and settlement area (North and East), they had been brought under an island-wide government only in the 19th cent. That this measure was introduced merely in order to facilitate the colonial administration, and neither signified nor led to an economically and socio-culturally integrated society testify the (colonial) constitutions since 1931 heralding self-government (Donoughmore, Soulbury) with their explicite safeguards for the minorities. Very densely populated (the Jaffna peninsula counted 940 inh./km² at the last census in 1981), plagued by landlessness, water-deficiency, and practically devoid of any modern industry (80 % are concentrated in and around Colombo), the Sri Lankan Tamils have traditionally flourished on fishing, and on the export of agricultural products (rice, vegetables, spices) and of (highly qualified, English speaking) manpower (to Colombo as well as abroad). The *language and education policy* of independent Sri Lanka drastically curtailed these chances of gaining a livelihood, and seriously infringed upon the social, economic and cultural rights of the Tamils.

Thus, the "Official Languages Act" of 1956 proclaimed Sinhala the sole official language of the country; with later legislation restricting the use of Tamil in various fields of administration even further. The final recognition of Tamil as a ‚national language' in the 1978 constitution, does not alter the systematic discrimination. Thus, at police stations in Colombo, everything is recorded in Sinhalese, so that Tamils are obliged to sign statements written in a language they can't read. And the Centre for the Independence of Judges and Lawyers notes, that ‚the access to justice of Tamil-speaking parties to proceedings and lawyers is seriously restricted by the lack of interpreters, by delays in publishing legislation and Emergency Regulations in Tamil, and by the absence of Law Reports and textbooks in Tamil'.

In 1973, the ethnic bias in language policy was complemented by ‚standardisation of education', an admission policy to higher education which severely limited the chances of Tamils students. Meanwhile, outright neglect of Tamil medium schools even at lower levels has been reported. Thus, according to the Ceylon Tamil Teachers Union there are 470 technical and vocational courses in Sinhala, but only 65 in Tamil; in the Vanni, there are no technical colleges at all; against eight courses in computer studies offered in Sinhala, there is but one in Tamil, and none at all in vocational and technical education in radio and TV technology, electronics and motor vehicle maintenance. Officially, there was a shortage of 10.000 Tamil medium teachers in 1996. But only 4000 have so far been appointed despite the availability of funds from the World Bank and the Asian Development Bank. By contrast, inspite of a surplus of 14.000 Sinhala medium teachers, another 10.000 have been recruited.

As a result, the employment pattern in administration and state enterprises has become decidedly mono-ethnic: the Sinhalese represent today 93 % of all government servants and 99% of the armed forces (in 1956 40 % of the latter were Tamils). Excluded, the Tamils, by contrast, have been effectively driven into unemployment, abroad or into rebellion.

- The constitution of 1972 (Art.6) accorded to *Buddhism*, the religion of the Sinhalese majority, "the foremost place", a provision reaffirmed in the 1978 constitution (Art.9) as well as the constitutional proposals of 1997/8 (the latter even providing for a ‚Supreme Council' of Buddhist Clergy to advice the government). It marks a decisive departure from secularism and the proclaimed multi-culturalism in a society where 15% of the population are Hindus, and 7 % each confess to Islam, Christianity respectively. It is but another step in the identification of the majority with the nation as such, as became clear when in 1974 the then and today's Primeminister, Mrs. Sirimavo Bandaranaike, declared Anuradhapura a Sacred Buddhist Area, in consequence of which all Hindu temples in the vicinity were demolished. The burning in 1981 of the Jaffna Historic Public Library by the Sri Lankan army and police not only destroyed this repository of some of the most valuable manuscripts and books on the history and culture of Sri Lankan Tamils. It was an attempt on the latter's cultural identity and, thus, on the people itself.

- In the course of the *government's peasant colonization schemes*, about a quarter of the island's population, overwhelmingly Sinhalese peasants from the South, is thought to have been moved since 1946 from the Wet to the Dry Zone (North-Centre, East). The ethnic composition in the North and East which the Tamils for historical and demographic reasons regard as their traditional homeland was thereby drastically altered: in 1881 the Sinhalese accounted for less than 2% of the population in these two provinces; by 1981, their share had increased in Trincomalee District to 33.6% and to 38% in Amparai District, whereas the respective proportion of Tamils decreased from 57 to 34 and 37 to 20%.

Starting in Amparai district in 1956, these resettlement schemes were often accompanied by forceful evictions of long-time Tamil villagers, amounting to *ethnic cleansing* (e.g. Gal Oya). As a result, the demographic continuity of the Tamil region was disrupted, while the creation of almost exclusively Sinhalese majority areas gave rise to two new Sinhalese electorates by the late 1970s. Analogous events took place in the early 1980s in Trincomalee District as well as in the Northern Province where under the Mahaveli Development Scheme exclusively Sinhalese peasant colonies were established in the Manal Aru area at the expense of over 3000 evicted Tamil families. There, the traditional Tamil names were not only replaced by Sinhalese ones (Manal Aru by Weli Oya, Thannimurippu by Janakapura), the oppressive nature of the state's colonisation manifests itself, moreover, in that the 25.000 new Sinhalese settlers were given arms and army camps were additionally contructed in the neighborhood. As for the Tamils, similar government sponsored regroupings into Sinhalese dominated districts did not occur.

‣ The **Internally Displaced Persons (IDP)**, particularly in the **Vanni**, a rural and forest area in the North, present another case of denial of human rights to Tamil people. As a result of the war, 50 % of the district's 250.000 original inhabitants has been displaced and another 250.000 people have entered the area. Unemployed and penniless as most of these half a million people are, they depend on the government for survival. Thus, there are only 8 physicians, no dentists, no gynecologists or paediatrician. Cultivable area in 1998 had been reduced to one fifth or less of what was available in 1994. The land shortage has been compounded by an economic embargo that –theoretically applying only to potentially military items- has led in practice to restricted supplies of fertilizers and chemicals, kerosene and agricultural machinery, etc. Fishing, the other major source of livelihood, stands officially banned. In consequence, many people, 400.000 according to Government Agents, depend on the government, i.e. are eligible for dry rations. However, in line with other accounts, the 1997 and 1998 reports of the US Committee for Refugees conclude, that the supply of food and medicine by the government has been consistently inadequate, with the situation in the government detention camps, where 40.000 families are housed with 5-8 persons living in shelters of 8 x 10ft, reportedly being even worse. In consequence, malnutrition, anemia, low birth rates, and a return of malaria have been observed. Such withholding of necessary basic supplies are in clear violation of human rights and humanitarian law which can in no way be justified by the war.

In order to put an end to these multiple denials of economic, social and cultural rights, the Society for Threatened Peoples asks the United Nations Commission for Human Rights:

- To put pressure on the Sri Lankan government to end its employment of food and medicine as weapons of war, and to adequately supply forthwith the internally displaced persons in the country, particularly in the Vanni, according to human rights and humanitarian law;
- To recognize the long-standing systematic pattern of discrimination against the Tamils by successive Sinhalese dominated governments;
- To take into account this violation of economic, social and cultural rights of the Tamils as the root cause for the present armed conflict while deliberating the human rights situation in the country and measures to improve it;
- To take into consideration that economic, social and cultural rights are not only invariably and intimately linked to political and civil rights, but that the rights of minorities are neither safeguarded in a formal democratic set-up, nor can they based on individual rights. What is urgently needed are collective rights.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/126
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 11(a) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF: TORTURE AND DETENTION

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

The Society for Threatened Peoples wishes to bring the case of the arbitrary detention and denial of proper medical treatment to Leonard Peltier to the attention of the Commission on Human Rights.

Leonard Peltier, a Lakota-Chippewa known worldwide as a defender of the traditional, cultural, civil, and human rights of Native Peoples, is currently incarcerated in Leavenworth Federal Penitentiary in the United States for a crime he did not commit. He has become a notorious symbol of injustice toward Indigenous Peoples. His personal is recorded in the Commission's document E/CN.4/1997/NGO/80.

Leonard Peltier has been arbitrarily detained in U.S. federal prisons for twenty-four years. The initial investigation, his illegal extradition, his unfair trial, his appeals, current parole proceedings and the current campaign for executive clemency have all demonstrated that Mr. Peltier is not being held in prison in order to punish a crime. It is our belief that he has been imprisoned for political reasons.

The United States has admitted direct responsibility for Mr. Peltier's fraudulent extradition from Canada in 1976. According to FBI documents they prepared and submitted false affidavits to Canadian officials. Since 1986 the US government has routinely admitted that it is impossible to prove who committed the crime of which Mr. Peltier was convicted.

In November 1993 former US Attorney-General Ramsey Clark filed a petition for executive clemency with the White House on behalf of Mr. Peltier. On average a review of such a petition is completed within six to nine months and it rarely takes longer than two years for a response to be received. However it almost seven years since Mr. Peltier's petition was filed and the President has still not responded.

Furthermore, Mr. Peltier has been detained for eight years in excess of the US Parole Commission's own guidelines for release. The US Parole Commission set his next parole hearing for the year 2008, 17 years later than the Parole Commission's release guidelines would indicate and six years beyond the date set by Congress for the Parole Commission's own abolition. Such practice may be regarded as constituting a clear form of arbitrary detention in violation of the International Covenant on Civil and Political Rights.

Mr. Peltier's health continues to deteriorate as a result of the prison authorities' denial of proper medical treatment. If Mr. Peltier does not receive medical treatment immediately his condition will is certain to deteriorate further and become life-threatening. The terrible health conditions that Mr. Peltier has been forced to endure over many years may easily be interpreted as constituting cruel and unusual punishment. Allowing him to remain in excruciating pain for the last four years may also be considered a form of torture.

The Federal Bureau of Prisons recently stated that Mr. Peltier is suffering from "diabetes, a cardiac condition, and hyperlipidemia. He previously suffered a stroke, rendering these conditions particularly serious. Leonard Peltier has also lost 80% of the vision in his left eye as a result of the prison authorities' failure to provide him with prompt and necessary medical treatment. Prison medical staff have recommended treatment for a prostrate condition but no such treatment has been provided.

On 11 February 1999, the European Parliament adopted a resolution insisting that Mr. Peltier be granted presidential executive clemency and transferred to a hospital where he may receive appropriate medical treatment and reiterating their call for an investigation into the judicial improprieties involved in his conviction.

By denying Mr. Peltier appropriate medical treatment, the US prison authorities are in violation of the Universal Declaration on Human Rights (article 5), the United Nations International Covenant on Civil and Political Rights (article 7), the United Nations Standard Minimum Rules for the Treatment of Prisoners (part 1, article 22 (2)), and the Universal Declaration on the Protection of all Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (article 1). Every State is bound by the prohibition against torture as a matter of jus cogens.

On 10 December 1998, President Clinton signed an executive order on the implementation of International Human Rights treaties signed by the United States and the United States's obligations pursuant to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination.

On 2 November 1998 the United Nations Special Rapporteur on Torture made an urgent appeal on behalf of Mr. Peltier and the case has been included and highlighted in his report for 1999 (E/CN.4/1999/61). The Special Rapporteur has stated that the case of Mr. Peltier continues to be of current concern to him.

In the light of all this, Society for Threatened Peoples calls upon the Commission to instruct the Special Rapporteur on Torture and the Working Group on Arbitrary Detention to visit the United States in order to carry out a study of the US justice system with reference to the issue of racial discrimination and to investigate the case of Leonard Peltier, as well as those of other political prisoners, and their conditions of detention, in particular at the Marion Control Unit, Leavenworth Federal Penitentiary, SCI Greene, Pelican Bay State Prison and Florence Institution, among others, and to report back to the next session of the Commission.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/127
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Since 1990 over two million children have been killed in armed conflicts worldwide. During 1999 Gesellschaft für bedrohte Völker has observed with great concern how children in East Timor, the Sudan and Sri Lanka have been the victims of expulsion and civil war. In Sri Lanka both the government and the Liberation Tigers of Tamil Eelam (LTTE) liberation movement have been guilty of violating the basic rights of children. Over one million children have been killed, injured or forced to flee their homes during a civil war that has lasted 16 years. The opposing parties show less and less concern for the fate of the civilian population. For example 21 Tamils died when the Sri Lankan air force bombed the market place in the town of Puthukkudiruppu on 15 September 1999. Three days later 38 inhabitants of three villages, including 11 children, were slaughtered by the LTTE in an act of reprisal. These attacks mean that both parties to the conflict are in violation of Art. 3 of the Geneva Conventions on the Protection of Civilians in Times of War. We have also noted with concern that, contrary to assurances that were given to the UN in 1998, the LTTE continues to recruit children under 17 years old to the armed struggle. For example in October 1999 more than 40 LTTE fighters aged between 11 and 14 years old were killed in clashes with the Sri Lankan army. Only an end to the war can stop the continuing violation of children's basic rights. However Sri Lanka is a long way away from achieving a peaceful solution. The territorial gains made by the LTTE during the autumn of 1999 have demonstrated the failure of the government's policy of securing peace through war. A peaceful solution to the conflict will not be achieved without international mediation. That is why we are appealing to the UN Commission for Human Rights to press all parties to the conflict to agree to internationally-mediated peace negotiations conducted under the auspices of the UN and to guarantee the safety of the civilian population.

In Sudan likewise children in particular have suffered as a result of the civil war that has continued uninterruptedly since 1983. For example, during the summer of 1999 over 50,000 children in the Western Upper Nile region were not vaccinated against measles because of continuous fighting between opposing factions armed by the Sudanese army. For months the authorities refused to allow relief flights to take place. On numerous occasions hospitals and other clearly-marked humanitarian facilities operated by international aid organisations were bombed by the Sudanese air force. We are urging the UN Commission for Human Rights to condemn the obstruction of humanitarian work in Sudan and to call on the UN Secretary-General to press for an end to the genocide in Sudan that has claimed over two million victims.

Children in East Timor have also been the particular victims of serious human rights violations. For example, over 500 East Timorese children died in refugee camps in West Timor as a consequence of totally inadequate supplies of humanitarian aid and the deliberate obstruction of relief agency operations by the Indonesian authorities and pro-Indonesian militia. The number of children who suffered human rights violations in East Timor in 1999 is still unknown. Over 500,000 East Timorese were forced to flee their homes or deported by militia armed by the Indonesian Army and taking orders from them. We are calling on the UN Commission for Human Rights to support the establishment of an International Tribunal for East Timor that will bring those responsible for serious violations of human rights to account. In the absence of an independent judiciary, an internal inquiry conducted in Indonesia can offer no guarantee that the high-ranking generals and ministers responsible will also be charged and sentenced.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/128
7 March 2000

Original: ENGLISH, FRENCH
AND SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 15 of the provisional agenda

INDIGENOUS ISSUES

Written statement*/ submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[3 March 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Recognition of the rights of Indigenous Peoples

Gesellschaft für bedrohte Völker is taking advantage of the halfway stage in the UN Decade for Indigenous Peoples, reached in December, to urge the rapid adoption without further modification of the existing draft text of the UN Declaration on the Rights of Indigenous Peoples. Discussion of the rights of aboriginal peoples commenced in the 1980s and the draft Declaration which the UN Working Group on Indigenous Populations spent years drawing up has been available since 1993.

For the last four years the Ad-Hoc Working Group set up by the Human Rights Commission has been discussing this draft text without any solution to the central issues apparently being in sight. To date consensus has been reached on only two of the 45 articles contained in the draft. We ask ourselves why those States who are currently expressing reservations could not have voiced their concerns as to the wording at some time during those earlier years. They were, after all, represented in the UN Working Group on Indigenous Populations throughout that time by delegations with observer status who were able to address the Working Group directly.

Gesellschaft für bedrohte Völker supports those indigenous peoples who are specifically asserting their right to self-determination and to the occupation of their traditional homelands. We consider the argument that this might encourage attempts at secession to be essentially a pretext for denying them the basic right to determine their own political status within the nation-state. That would of course pose a challenge to the principle of the unified state that many states continue to uphold. However the future of our modern age and of democracy lies in maintaining a diversity of cultures and hence in a multinational constitutional framework for the state.

Gesellschaft für bedrohte Völker urges the Human Rights Commission to reject attempts to restrict the access of indigenous representatives to the deliberations of the Working Group. We also call on the Human Rights Commission to adopt the existing draft of the Declaration on the Rights of Indigenous Peoples without further delay and to encourage the rapporteur of the Ad-Hoc Working Group to act accordingly.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2000/NGO/129
8 March 2000

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Items 9, 11(a) and (d) of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION, AND INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by the Lawyers Committee for Human Rights, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[28 January 2000]

---

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

Torture and other Abuses in the Mexican Criminal Justice System

1. The Lawyers Committee for Human Rights continues to be concerned about the use of torture in criminal investigations and prosecutions in various parts of the world. The criminal justice system in Mexico illustrates the unfortunate link between insufficient procedural protections and serious violations of human rights.

2. Most experts agree that there has been some improvement in the situation of criminal defendants in Mexico in recent years. Nonetheless, persons detained and/or prosecuted within the Mexican justice system continue to suffer from physical mistreatment and other abuses, such as demands for bribes, at the hands of the authorities. In some cases, this mistreatment includes torture.

3. We welcome the recent investigations regarding the incidence of torture in Mexico by United Nations, OAS and Mexican bodies. All of these organizations have concluded that torture remains a serious problem in Mexico [see the reports of the Special Rapporteur on the question of torture (E/CN.4/1998/38/Add.2, 14 January 1998), the UN Human Rights Committee (CCPR/C/79/Add.109), the Inter-American Commission on Human Rights (Report on the Situation of Human Rights in Mexico, 1998) and the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*) (Annual Report of Activities May 1997-1998, Summary 8, June 5, 1998)].

Weaknesses in the Mexican Criminal Process that Lead to Human Rights Violations

4. Certain aspects of the laws and practices governing the criminal process in Mexico encourage abuse. Many of these laws and practices are touted as measures to combat criminal impunity and to permit the swift and sure application of justice. However, these measures have fostered reliance on investigative tactics which include torture. In addition to violations of international human rights standards, such techniques may lead to wrongful convictions and inefficient law enforcement.

5. The following aspects of the Mexican criminal system illustrate the current abuses taking place in Mexico, and highlight those elements of any criminal process that are most susceptible to abuse. Many of the existing problems in Mexico have been identified by UN and OAS bodies and recommendations for reform have been made. It remains for Mexico to take effective steps to implement those recommendations.

6. *Arbitrary detentions* are prevalent in Mexico, and there exists an important relation between arbitrary detentions and other abuses against detainees. The best guarantee against arbitrary detentions is the requirement that all detentions be carried out pursuant to a judicial order. However, Mexican laws now provide for exceptions to the general constitutional rule requiring a judicial warrant in cases of *in flagrante delicto* and "urgent" matters. These exceptions have been increasingly broadened in recent years through successive legislative reforms. In its 66th session, the UN

Human Rights Committee noted, in its concluding observations, that "the extension of the concept of 'flagrancy' implies a serious threat to the security of persons". The Committee also highlighted the potential for abuses when the Office of the Attorney General exercises its authority to hold persons arrested under these exceptions for a period of 48-96 hours before presenting them to a judge.

7. *Failure to provide prompt access to legal counsel.* The criminal defendant's constitutional right to a defense attorney during the prior investigation stage (*averiguación previa*) of a criminal proceeding has been so narrowly interpreted that a detained defendant is denied the right to access counsel until he makes his formal declaration to the Public Ministry. Since the Public Ministry is entitled to detain a suspect for 48-96 hours, the authorities are provided with a lengthy opportunity to interrogate the defendant, in the absence of a lawyer, prior to taking the declaration. This clearly increases the chance that the defendant's formal declaration will be the result of coercion. The UN Human Rights Committee "deplore[d]" these limitations on the right of a suspect to have early access to an attorney.

8. *Unsafe circumstances for the taking of confessions.* The Mexican Constitution provides that a confession must be made before the Public Ministry or a judge in order to constitute evidence in legal proceedings. This rule was adopted in order to prevent the Judicial Police from obtaining confessions because Police agents often committed abuses when they interrogated criminal suspects. Although this reform is a welcome advance, the rule does not deal with the problem that agents of the Public Ministry share an identity of goals with the Judicial Police. Accordingly, many of the problems which characterized the process when the Judicial Police had the authority to obtain confessions (including torture and unreliable confessions) continue to exist when confessions are taken by the Public Ministry. For this reason, both the UN Special Rapporteur on Torture and the Inter-American Commission on Human Rights have specifically recommended that the laws be amended so that only judges are permitted to take confessions.

9. *Improper judicial consideration of allegedly coerced confessions.* The criminal procedure code lacks provisions to guide judicial evaluation of allegations that confessions may be tainted by coercion. In the absence of guidance, judges have placed an improper burden on the defendant to establish both the alleged mistreatment or torture and the causal link between this mistreatment and the confession. In addition, the criminal procedure codes in Mexico fail to clearly establish that a confession obtained through torture or other coercion must absolutely be excluded from the criminal hearing. In accordance with the principle that all defendants should enjoy the presumption of innocence, it is inappropriate for the burden of proof to lay on the defendant to establish coercion, nor is it appropriate for a confession obtained by coercion to constitute evidence in a trial. The UN Human Rights Committee and the Special Rapporteur on Torture have expressed their concern about such practices.

10. *Lack of judicial supervision and the non-public nature of proceedings.* Judges do not attend most proceedings in the cases for which they are responsible. The secretary of the court attends those proceedings and works with the stenographer to record them while the judge remains in his or her office subject to call in the case of a serious dispute. The judge then makes his or her decision based on the written record. Furthermore, the hearings are not truly public in nature. The general public is placed at a physical distance from the proceeding which prevents them from following events. The Human Rights Committee noted, in this regard, that the criminal procedure applied in Mexico "constitutes an obstacle to full compliance with article 14 of the Covenant, which requires a trial to take place before a judge...and at a public hearing."

Recommendations

11. The Lawyers Committee for Human Rights calls on the Commission on Human Rights to urge the Mexican Government to fully implement the recommendations of the United Nations Human Rights Committee, the United Nations Special Rapporteur on the question of torture and the Inter-American Commission on Human Rights with respect to the criminal process.

12. The Lawyers Committee for Human Rights also calls on the Commission on Human Rights to ensure that the Technical Assistance Programme between the United Nations Office of the High Commissioner for Human Rights and the Mexican Government grants priority attention to the criminal justice system in Mexico and otherwise addresses the root causes of the human rights problems in Mexico. For this purpose, the Lawyers Committee hopes that the Commission on Human Rights will urge the Mexican Government to accept a visit from the High Commissioner's Needs Evaluation Mission as soon as possible and allow that Mission wide latitude in analyzing human rights issues, including those relating to criminal justice.